

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

PEREZ WORLEY,	)	Case No. 1:18-cv-00050
	)	
PETITIONER,	)	JUDGE DONALD C. NUGENT
	)	
vs.	)	
	)	
CHARMAINE BRACY, WARDEN,	)	<b><u>ORDER ADOPTING MAGISTRATE'S</u></b>
	)	<b><u>REPORT AND RECOMMENDATION</u></b>
RESPONDENT.	)	

This matter comes before the Court upon Magistrate Judge Kathleen B. Burke's Report and Recommendation (ECF #13). On January 9, 2018, Petitioner Perez Worley ("Petitioner") filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 ("Petition"). (ECF #1). Subsequently, on March 5, 2018, Worley filed a Motion for Stay and Abeyance of a habeas corpus petition ("Motion"). (ECF #4). At the time he filed the Motion, Petitioner had an action for a writ of mandamus against the sentencing court pending in the Ohio Eighth District Court of Appeals. (Id.). In ruling on Worley's writ of mandamus, (ECF #12), the court of appeals found that Petitioner did receive a final appealable order, and denied the writ as moot because the trial court had scheduled a hearing to impose post release control. (Id.). Petitioner requested that the Court nevertheless stay his Petition while he appealed from his resentencing and continued to argue that his original sentence did not constitute a final appealable order. (ECF # 9). Pursuant to Local Rule 72.2(b), this case was referred to Magistrate Judge Burke. (Non-document entry dated January 9, 2018). Magistrate Judge Burke concluded that a stay of Petitioner's claim would be inappropriate, and Petitioner's motion should be denied because it is a "mixed petition," including both exhausted and unexhausted claims. *See Rhines v. Weber*, 544 U.S.269, 273-74 (2005). Magistrate Judge Burke recommended that the Court deny Respondent's Motion for Stay and Abeyance of his habeas corpus petition. Petitioner timely filed objections to the Magistrate Judge's Report and Recommendation. (ECF #15).

The Court has reviewed *de novo* portions of the Magistrate Judge's Report and Recommendation to which objection has been made. See FED. R. CIV. P. 72 (b). The Court finds the Magistrate Judge's Report and Recommendation to be thorough, well-supported, and correct. The Court does not find the objections raised by Petitioner to be persuasive. The Report and Recommendation fully and accurately addresses all of Petitioner's claims. The claims raised by Petitioner are without merit, and present legal or factual arguments already fully addressed by the Magistrate Judge's Report and Recommendation. Accordingly, there is no basis upon which to stay Petitioner's motion.

### Conclusion

After careful evaluation of the record, this Court adopts the findings of fact and conclusions of law of the Magistrate Judge as its own. The Report and Recommendation (ECF 13) is ADOPTED. Petitioner's Motion requesting a stay and abeyance of his habeas corpus petition (ECF #4) is DENIED. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); FED R. APP. P. 22(b). For the reasons thoroughly discussed in the Magistrate Judge's Report and Recommendation, a reasonable jurist could not conclude that this Court's assessment of Petitioner's claim is debatable or wrong. Accordingly, the Court declines to issue a certificate of appealability.

IT IS SO ORDERED.

DATED: September 17, 2018

  
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DONALD C. NUGENT  
United States District Judge